From: Aaron S Kamlay
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: Microsoft Settlement

To Whom It May Concern:

I am writing to comment on the Proposed Final Judgment (PFJ) of the
United States v. Microsoft antitrust case. I believe that the PFJ
does very little to discourage Microsoft from continuing its
anticompetitive practices, and fails to restore balance to the
markets which have been seriously damaged by those practices in the
past.

Specific Failures of the Proposed Final Judgment:

1. Section III.J.2
Section III.D requires Microsoft to licence "the APIs and related
Documentation that are used by Microsoft Middleware to interoperate
with a Windows Operating System Product" to "ISVs, IHVs, IAPs,
ICPs, and OEMs". However, section III.J.2 essentially gives
Microsoft the freedom to choose which ISVs, IHVs, etc. may receive
this information by allowing Microsoft to require that any licensee

"(a) has no history of software counterfeiting or piracy or
willful violation of intellectual property rights, (b) has a
reasonable business need for the API, Documentation or
Communications Protocol for a planned or shipping product, (c)
meets reasonable, objective standards established by Microsoft for
certifying the authenticity and viability of its business, (d)
agrees to submit, at its own expense, any computer program using
such APIs, Documentation or Communication Protocols to third-party
verification, approved by Microsoft?"

This gives Microsoft the ability to keep the "applications barrier
to entry" artificially high. There are no restrictions on what
Microsoft may consider "authenticity and viability of [the
licensee's] business" or even a "reasonable business need". It
could be used to keep start-up or open source software projects
from gaining access to APIs crucial to their success; in fact, it
could allow Microsoft to restrict such projects from information to
which they had prior access via the MSDN. (See, for example, Jeremy
White's analysis of the impact of section III.J.2 on the open
source Wine project at
http://www.codeweavers.com/~jwhite/tunneywine.html.)

2. Section III.D.1

Section III.D.1. exempts Microsoft from the requirement to

"document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems?"

It has been reported by a variety of news agencies that Microsoft has plans to include digital rights management, authentication, and other related security features in future versions of Windows. See for example,

The Register, Mar 23 2001,
"MS plans 'Secure PC' that won't copy pirated audio files"
http://www.theregister.co.uk/content/4/17851.html

Wired News, Feb 13 2001,
"Windows XP Can Secure Music"
http://www.wired.com/news/technology/0,1282,41614,00.html

Microsoft has already included encryption services in Windows 2000 Service Pack 2
(see
http://www.microsoft.com/windows2000/downloads/servicepacks/sp2/def ault.asp).

Given Microsoft's past actions, including integration of Internet Explorer with the Windows OS, and more recently integration of Windows Media Player with WindowsXP (see http://news.com.com/2100-1040-256387.html?legacy=cnet), there is every reason to assume that Microsoft will integrate current and future installations of "anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems" into the Operating System. Thus many key APIs, such those dealing with basic network communication, file/disk access, and even simple multimedia capabilities could be claimed as exceptions under section III.D.1. Again, this would serve to keep the "applications barrier to entry" artificially high.

3. General Remedies and Penalties
Microsoft has been found guilty of maintaining their monopoly status through illegal means. They should not be allowed to maintain the profits earned by doing so. The PFJ basically codifies the current status quo into law, and neither punishes Microsoft for their past infractions nor prevents them from similar actions in the future. Strong structural and financial remedies

and/or penalties are necessary to restore balance to a horribly damaged marketplace.

The Proposed Final Judgment is completely unacceptable as a resolution to the U.S. v. Microsoft case. Please consider stronger, more effective remedies.

Thank you,

(signed)
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